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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,533	07/24/2002	Luis Felipe Guglielmucci		8347

32529 7590 08/18/2005

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EXAMINER

LANEAU, RONALD

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,533

Applicant(s)

GUGLIELMUCCI, LUIS FELIPE

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/13/05 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 recites the following limitations:

In line 4, the amount of channels, in lines 4-5, the customer's reproducer's system, in lines 5-6, the reproducer system characteristics, in line 7, the record and optional content, in lines 8-9, the record, in line 11, the source channels, in line 13, the customer, the number of channels, in lines 17-18, the record, in lines 19-20, the customer reproduction device, in line 22, the customer, his reproducer equipment, in line 30, the on demand, in line 31, the customer site."

There is insufficient antecedent basis for this limitation in the claim.

Furthermore, in line 4, Applicant claims "the amount of channels" and in line 14, the number of channels, in line 6, reproducing environment and in lines 19-20, the customer reproduction device, in line 3, an on demand multichannel music record and in lines 30-31, the on demand produced multichannel record, in line 3, an on demand multichannel music record

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and in lines 20, 2224, 28, the customized multichannel record " there is no consistency in the claim.

Regarding claim 3, the phrase "in example" in line 25 renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sitnik (US 6,300,880 B1) in view of Nakamura (US 6,687,378 B1).

Claim 3 will be rejected as best understood by the Examiner.

As per claim 3, a business method for sale of customized multichannel music records where the method comprises the acts: electronically create an on demand a multichannel music record taking in account the customer preferences in relation to the amount of channels at the reproducer system, the type of speaker attached to each channel, the reproducer system characteristics, the reproducing environment characteristics and customer preferences related to the use of the record and optional content available for the record (see abstract, col. 3, lines 63 to col. 4, line 26); electronically retrieve, file and apply specific customization parameters from the

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customer interface (col. 9, lines 6-18); electronically assemble the customized multichannel record with other multimedia data related to the content or customers preferences (col. 7, lines 45-53); deliver the customized multichannel record to the customer in an electronic way or in a physical media (col. 8, lines 29-36); electronically tune or adjust the customized multichannel record if the customer improves or change its reproducer equipment, in example adding more channels; electronically complement through an on line telecommunication network such as internet the customized multichannel record to allow its reproduction and/or to improve the richness of the record while is being played (col. 14, lines 38-65);

Sitnik does not explicitly disclose a multichannel record by mixing and combining the source channels applying audio techniques including but not limited to amplification, attenuation, phase correction, equalization, and filtering but Nakamura is cited to show that the concept of creating a new multichannel record by mixing and combining the source channels applying audio techniques including but not limited to amplification, attenuation, phase correction, equalization, and filtering to fit a previous selection of preferences defined by the customer for at least the number of channels, type of speaker attached to each channel, the reproducer system characteristics, the reproducing environment characteristics and customer preferences related to the use of the record and optional content available for the record; electronically retrieve, file and apply specific customization parameters from the customer music reproduction device (see figs. 2-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the mixing and combining the source channels as taught by Nakamura into the system of Sitnik because it would improve the sound quality and the sound image perceived by

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those who are sitting in the room where the sound is being reproduced. Neither Sitnik nor Nakamura discloses reproducing on-line the on demand created multichannel music record at the customer site but it is old and well known in the art that the reproduction is done either online or offline and at the customer's site for example in a car as disclosed by Nakamura. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the combined system of Sitnik and Nakamura either in an on-line environment because it would open their system to the latest technology available.

Response to Arguments

6. Applicant's arguments filed on 06/17/05 have been fully considered but they are not persuasive.

Applicant argues that Nakamura does not disclose the business model proposed in the application. Both the current application and Nakamura deals with improving a multichannel reproduction by mixing and combining the source channels applying audio techniques. Applicant admits that Nakamura and the current application seek the improvement of the listener perceived quality and the examiner notices that it does not matter how many channels for the distribution, the user defines the amount of channels for the audio components to be distributed on. Furthermore, Applicant argues that there is no reason to combine the references, in response to applicant's arguments, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d

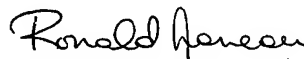
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1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ronald Laneau
Examiner
Art Unit 3627

8/10/05

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